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3 UNITED STATES DISTRICT COURT
4 DISTRICT OF NEVADA
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6 DOUGLAS G. TWEEDY,

7 Plaintiff,

8 vs.

9 NANCY A. BERRYHILL,
10 Acting Commissioner of Social
11 Security Administration,

12 Defendant.

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) Case No. 2:19-cv-00853-GMN-CWH
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13 **SCREENING ORDER**
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Presently before the court is plaintiff's application to proceed *in forma pauperis* (ECF No. 1). Plaintiff has submitted the declaration required by 28 U.S.C. § 1915(a) showing an inability to prepay fees and costs or give security for them. Accordingly, Plaintiff's request to proceed *in forma pauperis* will be granted.

Upon granting a request to proceed *in forma pauperis*, a court must screen the complaint under 28 U.S.C. § 1915(e)(2). In screening the complaint, a court must identify cognizable claims and dismiss claims that are frivolous, malicious, fail to state a claim on which relief may be granted, or seek monetary relief from a defendant who is immune from such relief. 28 U.S.C. § 1915(e)(2). Dismissal for failure to state a claim under § 1915(e)(2) incorporates the standard for failure to state a claim under Federal Rule of Civil Procedure 12(b)(6). *Watson v. Carter*, 668 F.3d 1108, 1112 (9th Cir. 2012). To survive § 1915 review, a complaint must "contain sufficient factual matter, accepted as true, to state a claim to relief that is plausible on its face." *See Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009).

In considering whether the complaint is sufficient to state a claim, all allegations of material fact are taken as true and construed in the light most favorable to the plaintiff. *Wyer Summit P'ship v. Turner Broad. Sys. Inc.*, 135 F.3d 658, 661 (9th Cir. 1998) (citation omitted). Although the standard under Rule 12(b)(6) does not require detailed factual allegations, a plaintiff must provide more than

1 mere labels and conclusions. *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 555 (2007). A formulaic
2 recitation of the elements of a cause of action is insufficient. *Id.* Unless it is clear the complaint’s
3 deficiencies could not be cured through amendment, a plaintiff should be given leave to amend the
4 complaint with notice regarding the complaint’s deficiencies. *Cato v. United States*, 70 F.3d 1103,
5 1106 (9th Cir. 1995).

6 If a plaintiff’s complaint challenges a decision by the Social Security Administration (“SSA”),
7 before filing a lawsuit, the plaintiff must exhaust administrative remedies. *See* 42 U.S.C. § 405(g); *see*
8 *also Bass v. Social Sec. Admin.*, 872 F.2d 832, 833 (9th Cir. 1989) (per curiam) (“Section 405(g)
9 provides that a civil action may be brought only after (1) the claimant has been party to a hearing held
10 by the Secretary, and (2) the Secretary has made a final decision on the claim”). Generally, if the SSA
11 denies a claimant’s application for disability benefits, the claimant may request reconsideration of the
12 decision. If the claim is denied at the reconsideration level, a claimant may request a hearing before an
13 administrative law judge (“ALJ”). If the ALJ denies the claim, a claimant may request review of the
14 decision by the Appeals Council. If the Appeals Council declines to review the ALJ’s decision, a
15 claimant may then request judicial review. *See generally* 20 C.F.R. §§ 404, 416.

16 Once a plaintiff has exhausted administrative remedies, he may obtain judicial review of a SSA
17 decision denying benefits by filing suit within 60 days after notice of a final decision. *Id.* An action for
18 judicial review of a determination by the SSA must be brought “in the district court of the United States
19 for the judicial district in which the plaintiff resides.” *Id.* The complaint should state the nature of
20 plaintiff’s disability, when plaintiff claims he became disabled, and when and how he exhausted his
21 administrative remedies. The complaint should also contain a plain, short, and concise statement
22 identifying the nature of plaintiff’s disagreement with the determination made by the Social Security
23 Administration and show that plaintiff is entitled to relief. A district court can affirm, modify, reverse,
24 or remand a decision if plaintiff has exhausted his administrative remedies and timely filed a civil
25 action. However, judicial review of the Commissioner’s decision to deny benefits is limited to
26 determining: (a) whether there is substantial evidence in the record as a whole to support the findings of
27 the Commissioner; and (b) whether the correct legal standards were applied. *Morgan v. Commissioner*
28 *of the Social Security Adm.*, 169 F.3d 595, 599 (9th Cir. 1999).

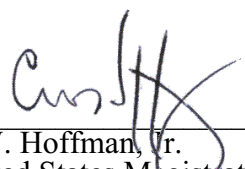
1 Here, plaintiff alleges that on March 18, 2019, the Appeals Council denied his request for
2 review, and, at that time, the ALJ's decision became the Commissioner's final decision. Plaintiff
3 brought this case on May 20, 2019, fewer than 60 days later. Thus, it appears plaintiff has exhausted
4 his administrative remedies. Additionally, plaintiff's complaint includes sufficient facts to state a claim
5 for relief.

6 Based on the foregoing and good cause appearing therefore,

7 IT IS ORDERED that:

- 8 1. Plaintiff's request to proceed *in forma pauperis* is GRANTED. Plaintiff will not
9 be required to pay the filing fee of \$400.00.
- 10 2. Plaintiff is permitted to maintain this action to conclusion without the necessity of
11 prepayment of any additional fees or costs or giving security for them. This order granting leave to
12 proceed *in forma pauperis* does not extend to the issuance of subpoenas at government expense.
- 13 3. The Clerk of Court must file the complaint.
- 14 4. The Clerk of the Court must serve the Commissioner of the Social Security
15 Administration by sending a copy of the summons and complaint by certified mail to: (1) Office of
16 Regional Chief Counsel, Region IX, Social Security Administration, 160 Spear St., Suite 899, San
17 Francisco, California 94105-1545; and (2) the Attorney General of the United States, Department of
18 Justice, 950 Pennsylvania Avenue, N.W., Room 4400, Washington, D.C. 20530.
- 19 5. The Clerk of Court must issue summons to the United States Attorney for the District of
20 Nevada and deliver the summons and complaint to the U.S. Marshal for service.

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22 DATED: July 11, 2019

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C.W. Hoffman, Jr.
United States Magistrate Judge